IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

Bail Appl..No. 7192 of 2007()

CRIME NO.483/07 OF PARAVUR POLICE STATION

PETITIONERS/ACCUSED

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1. JAYAKUMAR, AGED 36 YEARS,
   S/O RAGHAVAN, KEEZHATHIL VEEDU,
   AYIROOR P.O., VARKALA,
   THIRUVANANTHAPURAM DISTRICT.

2. SABU, AGED 30 YEARS,
   S/O SAHADEVAN, POTTANKULAM VEEDU,
   ELAKAMON P.O., VARKALA, THIRUVANANTHAPURAM DIST.

BY ADV. SRI.V.VENUGOPALAN NAIR

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY THE
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
   PARAVUR POLICE STATION, KOLLAM DISTRICT.

BY PUBLIC PROSECUTOR SHRI S.V.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 28/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 7192 OF 2007

Dated this the 28th day of November, 2007

O R D E R

Application for anticipatory bail. The petitioners are accused Nos.1 and 2 in a crime registered for offences punishable under section 353 IPC. The alleged incident took place on 10.11.07. The de facto complainant/a village officer on 10.11.07 as a revenue official along with his colleague, had intercepted the commission of the offence punishable under the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001. They stopped two lorries. They seized the vehicle documents. The petitioners, who were the drivers of the said lorries, allegedly assaulted the detecting revenue officials and sped away with the lorries concerned. The de facto complainant went to the police station and lodged the complaint. Investigation is in progress. The petitioners apprehend imminent arrest. They are allegedly drivers of the lorries in question.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. According to the learned

counsel, totally false allegations are raised against the petitioners. It was a holiday and the de facto complainant was not on duty at the relevant time. In any view of the matter, the petitioners do not deserve arrest and detention, submits the learned counsel.

3. The learned Public Prosecutor opposes the application. He submits that a serious view is liable to be taken against persons who have committed the alleged offence. There are no circumstances whatsoever justifying or warranting the invocation of jurisdiction under section 438 Cr.P.C. The petitioners may be directed to surrender before the learned Magistrate and seek regular bail, submits the learned Public Prosecutor.

4. I find merit in the opposition of the learned Public Prosecutor. I find no reason at the moment to doubt the version of the de facto complainant. Of course, there is a sweeping allegation that the petitioners are officials of the revenue department who were attempting to indulge in corruption on a holiday. There is a further contention that the lorries were not involved in any offence and vehicle documents were unnecessarily and unjustifiably taken away from the vehicles by the officials.

5. Having considered all the relevant inputs, I find merit in the opposition of the learned Public Prosecutor. I am satisfied that there are no features in this case which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioner must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course. I find no merit now in the contention that the petitioners are not revenue officials competent to effect seizure under the relevant rules.

6. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

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